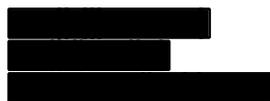




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/157368

PRELIMINARY RECITALS

Pursuant to a petition filed May 01, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Department of Health Services, Office of Inspector General (OIG) in regard to FoodShare benefits (FS), a hearing was held on June 03, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether OIG correctly determined that the Petitioner was overpaid FoodShare benefits between July 22, 2010 and December 31, 2013.

NOTE: The record was held open to give OIG an opportunity to supplement the record with the overpayment worksheet for claim [redacted] OIG submitted the document on June 4, 2014. It has been marked as Exhibit 14 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Keegan Trentzsch, Fraud Investigator
Office of Inspector General
1 West Wilson Street, Room 950
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On April 14, 2014, OIG sent Petitioner five Notifications of FoodShare Overissuance:

Claim [REDACTED], asserting that Petitioner was overpaid \$248.00 for the period of July 22, 2010 to December 31, 2010.

Claim [REDACTED], asserting that the Petitioner was overpaid \$1,104.00 for the period of July 1, 2011 to December 31, 2011.

Claim [REDACTED], asserting that the Petitioner was overpaid \$1,104.00 for the period of January 1, 2012 through June 30, 2012.

Claim [REDACTED], asserting that the Petitioner was overpaid \$1,104.00 for the period of July 1, 2012 through December 31, 2012

Claim [REDACTED], asserting that the Petitioner was overpaid \$1,978 for the period of January 1, 2013 to December 31, 2013

(Exhibits 8-11 and 14)

3. On May 2, 2014, OIG sent the Petitioner a repayment agreement for all five claims. (Exhibit 5)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 1, 2014. (Exhibit 1)
5. During the times in question, the Petitioner was married to [REDACTED], who resided with Petitioner when he was not on the road working as a truck driver. (Testimony of Petitioner)
6. [REDACTED] had a separate bank account from the Petitioner and did not give Petitioner access to the account. (Testimony of Petitioner)
7. During the times in question, Petitioner applied for Foodshare benefits for herself and did not include [REDACTED] in her household because he was seldom home and did not share his income with her. (Testimony of Petitioner)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), emphasis added; see also *FoodShare Wisconsin Handbook*, (FSH) § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

However, whose error caused the overpayment does make a difference in terms of how far back the agency can recoup overpaid benefits.

The look back period for client errors begins with the date of discovery (the day the IM discovered the potential that an overissuance may exist) and extends backward:

1. Six years, or
2. To the month the change would have been effective had the group timely reported it, whichever is most recent.

...

The look back period for non-client errors begins with the date of discovery (the day the IM discovered the potential that an overissuance may exist) and extends backward:

1. Twelve months, or
2. To the month the error was effective had the change been acted on timely, whichever is most recent

7 C.F.R. § 273.18(b); FSH § 7.3.2.1

Did the Petitioner Need to Report Her Husband as Part of Her Household?

In determining eligibility for FoodShare benefits, the agency must budget all income of the FoodShare household, including all earned and unearned income. 7 CFR § 273.9(b); FSH § 4.3.1 As such, the agency must determine who makes up the applicant's household. A household is defined as all people living in or temporarily absent from the same residence. 7 C.F.R. § 273.1(a); FSH § 3.3.1.1

The agency then looks to the Food Unit, which is defined as all the people in the same household who purchase and prepare food together. *Id.*

The agency then looks at the FoodShare group, which is defined as all the people who are in the same Food Unit who pass all non-financial eligibility criteria. *Id.*

In the case at hand, the Petitioner does not dispute the fact that she was married during the time in question, 2010 through 2013 and that she and her husband lived together. The Petitioner argues that they should not be counted as part of the same household or FoodShare group, because he was on the road a lot for work and did not give her access to his earnings. However, spouses must be included in the same food unit, even if they do not purchase and prepare meals together. 7 C.F.R. § 273.1(b)(1); FSH § 3.3.1.3 As such, Petitioner's husband should have been included in Petitioner's household/FoodShare group and income should have been considered in determining Petitioner's eligibility for FoodShare benefits.

Is Petitioner Liable for an Overpayment Between July 22, 2010 and December 31, 2010?

According to the testimony of Ms. Trentzsch, she requested Petitioner's tax returns for 2010, but did not receive them; so OIG determined that Petitioner was not entitled to any of the FoodShare benefits paid to her between July 22, 2010 and December 31, 2010. (See also Exhibits 2 and 4)

First, I have not seen anything in the FoodShare Wisconsin Manual that allows an agency to take a complete overpayment simply because requested verification is not provided. I note that 7 CFR §273.2(d) states that a household is deemed ineligible for benefits if it refuses to cooperate with the agency's efforts to determine eligibility for benefits; that same section further states that the agency must distinguish between a mere failure to cooperate from an outright refusal to cooperate.

In the case at hand, Ms. Trentzsch testified that the Petitioner openly discussed the case with her and did provide tax returns for 2011 and 2012. As such, it is difficult to conclude that the Petitioner was refusing to cooperate with OIG's investigation into her past eligibility for FoodShare benefits. Consequently, OIG has no basis upon which to deem the Petitioner completely ineligible for FoodShare benefits between July 22, 2010 and December 31, 2010.

I note that FSH § 1.2.1.3, which is based upon 7 CFR §273.2(f)(5), states that although the applicant has primary responsibility for providing the requested verification, the agency must assist the applicant in obtaining the requested verification, as long as the applicant is cooperating with the agency. 7 CFR §273.2(f)(5)(ii), further states that, "the State agency is responsible for obtaining verification from acceptable collateral contacts." If that fails, the agency must rely upon the best information it has, even if that is the customer's oral or written statement. FSH § 1.2.1.3; 7 CFR 273.2(f)(5)

In the case at hand, OIG only asked for tax returns. There is no evidence that the agency requested any other type of income verification for 2010, such as paystubs, an Employer Verification of Earnings Form, business ledgers or collateral information from Petitioner's accountant (whose name is listed in Exhibits 12 and 13). There is also no indication that the agency attempted to look at the State Wage Data from the Department of Workforce Development (DWD), even though this is a suggested verification source in FSH § 1.2.6.

Because OIG has presented no documentation showing what Petitioner reported on her application, nor any documentation showing what her income or her husband's income was in 2010, it has not met its burden to

prove, by a preponderance of the credible evidence, that the Petitioner is liable for a FoodShare overpayment for the period of July 22, 2010 to December 31, 2010. Claim [REDACTED] must be rescinded.

Is Petitioner Liable for an Overpayment Between July 1, 2011 and December 31, 2011?

The Petitioner submitted the tax return that her husband and she filed for 2011. (Exhibit 13) According to that document, their total gross income for the year was \$6,199. (See Line 22 of Exhibit 13) Divided by 12 months, that works out to be \$516.58 per month. (I note, however, that \$4,450 of that was from Unemployment Benefits, so some of that income may not be countable, if it includes a \$25.00 monthly ARRA payment. The agency would have to verify that through the data exchange with DWD.)

Looking at the FoodShare Overpayment Worksheet for claim [REDACTED], it shows that the agency calculated the overpayment, based upon monthly income of \$1513. This is not correct. This error likely occurred because the agency incorrectly transposed what Petitioner's spouse reported as net business income for the *entire year*, which was of \$1513.

According to *FSH §8.1.2*, a household of 2 with monthly income of \$516.58 per month would have been eligible for \$211 in FoodShare benefits per month during the time in question. The aforementioned overpayment worksheet indicates that Petitioner was paid \$200 per month in FoodShare benefits. As such, it is not likely that an overpayment occurred.

Based upon all of the foregoing, it is found that OIG has not met its burden to prove that the Petitioner was overpaid FoodShare benefits between July 1, 2011 and December 31, 2011.

Is Petitioner Liable for an Overpayment Between January 1, 2012 and December 31, 2012?

The Petitioner submitted the tax return that her husband and she filed for 2012. (Exhibit 12) According to that document, their total gross income for the year was \$24,207. (See Line 22 of Exhibit 12) Divided by 12 months, that works out to be \$2017.25 per month.

According to *FSH §8.1.2*, a household of 2 with monthly income of \$2017 per month would have been eligible for FoodShare benefits in the amount of \$16.00 per month, during the time in question. (The \$16.00 allotment was for households with monthly income between \$1167 and \$2083)

Looking at the FoodShare Overpayment Worksheets for claims [REDACTED] and [REDACTED], it appears the agency again used the incorrect income, but even so, it correctly determined the FoodShare allotment for 2012 to be \$16.00 per month.

The aforementioned Overpayment Worksheets show the Petitioner was paid \$200, the maximum amount of FoodShare benefits for a one person household throughout 2012. Petitioner did not dispute this.

Based upon the foregoing, it is found that the agency correctly determined that Petitioner was overpaid FoodShare benefits in 2012 and that the agency correctly calculated the amount of the overpayment.

Is Petitioner Liable for an Overpayment Between January 1, 2013 and December 31, 2013?

According to the testimony of Ms. Trentzsch she requested Petitioner's tax returns for 2013, but did not receive them; so OIG determined that Petitioner was not entitled to any of the FoodShare benefits paid to her between January 1, 2013 and December 31, 2013.

As discussed above, I have not seen anything in the FoodShare Wisconsin Manual that allows an agency to take a complete overpayment simply because requested verification is not provided. As noted above, 7 CFR §273.2(d) states that a household is deemed ineligible for benefits if it refuses to cooperate with the agency's efforts to determine eligibility for benefits; that same section further states that the agency must distinguish between a mere failure to cooperate from an outright refusal to cooperate.

In the case at hand, Ms. Trentzsch testified that the Petitioner cooperated with phone calls and did provide tax returns for 2011 and 2012. As such, it is difficult to conclude that the Petitioner was refusing to cooperate with OIG's investigation into her past eligibility for FoodShare benefits. Consequently, OIG has no basis upon which to deem the Petitioner completely ineligible for FoodShare benefits between January 1, 2013 and December 31, 2013.

I note, again, that *FSH § 1.2.1.3*, which is based upon 7 CFR §273.2(f)(5), states that although the applicant has primary responsibility for providing the requested verification, the agency must assist the applicant in obtaining the requested verification, as long as the applicant is cooperating with the agency. 7 CFR §273.2(f)(5)(ii), further states that, "the State agency is responsible for obtaining verification from acceptable collateral contacts." If that fails, the agency must rely upon the best information it has, even if that is the customer's oral or written statement. *FSH § 1.2.1.3; 7 CFR 273.2(f)(5)*

In the case at hand, OIG only asked for tax returns. There is no evidence that the agency requested any other type of income verification for 2010, such as paystubs, an Employer Verification of Earnings Form, business ledgers or collateral information from Petitioner's accountant (whose name is listed in Exhibits 12 and 13). There is also no indication that the agency attempted to look at the State Wage Data from the Department of Workforce Development (DWD), even though this is a suggested verification source in *FSH § 1.2.6*.

Because OIG has presented no documentation showing what Petitioner reported on her application, nor any documentation showing what her income or her husband's income was in 2010, it has not met its burden to prove, by a preponderance of the credible evidence, that the Petitioner is liable for a FoodShare overpayment for the period of January 1, 2013 to December 31, 2013. Claim [REDACTED] must be rescinded.

CONCLUSIONS OF LAW

- 1) OIG did not meet its burden to prove the Petitioner was overpaid benefits in the amount of \$248.00 for the period of July 22, 2010 to December 31, 2010, as asserted in claim [REDACTED]
- 2) OIG did not meet its burden to prove the Petitioner was overpaid benefits in the amount of \$1,104.00 for the period of July 1, 2011 to December 31, 2011, as asserted in claim [REDACTED]
- 3) OIG met its burden to prove that an overpayment of benefits, in the amount of \$1,104.00 occurred between January 1, 2012 and June 30, 2012, as asserted in claim [REDACTED]
- 4) OIG met its burden to prove that an overpayment of benefits, in the amount of \$1,104.00 occurred between July 1, 2012 through December 31, 2012, as asserted in Claim [REDACTED]
- 5) OIG did not meet its burden to prove the Petitioner was overpaid benefits in the amount of \$1,978 for the period of January 1, 2013 to December 31, 2013, as asserted in Claim [REDACTED]

THEREFORE, it is

ORDERED

- 1) The agency shall rescind Claim [REDACTED] and cease collection efforts.
- 2) The agency shall rescind Claim [REDACTED] and cease collection efforts.
- 3) The petition with regard to Claim [REDACTED] is dismissed.
- 4) The petitioner with regard to Claim [REDACTED] is dismissed.
- 5) The agency shall rescind Claim [REDACTED] and cease collection efforts.

The agency shall take all administrative steps to complete the tasks described under paragraphs 1, 2 and 5 above, within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of June, 2014

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 19, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability